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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/735,401

12/12/2003

Yu Zheng

PAT-1486CIP2

2110

7590

06/06/2006

Raymond Sun  
Law Offices of Raymond Sun  
12420 Woodhall Way  
Tustin, CA 92782

EXAMINER

YIP, WINNIE S

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/735,401	ZHENG, YU	
	<b>Examiner</b>	<b>Art Unit</b>	
	Winnie Yip	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This office action is in response to applicant's amendment filed on March 17, 2006.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### *Allowable Subject Matter Withdrawn*

1. The indicated allowability of claims 5-8 is withdrawn as better understood the claimed invention and in view of the reference(s) to Wang (US Patent No. 6,783,016), Shaw et al. (US Patent No. 5,429,437) and Connolly (US Patent No. 6,561,372). Rejections based on the newly cited reference(s) follow.

#### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-2, 4, 6-10, 12-15, and 18-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 and 12 of copending Application No.10/665,194. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim substantially same subject matters including a rim member, first and second foldable frame members, a flexible and waterproof material attached to the first and second frame members by sleeves and to define a containing member as claimed except different wordings.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-2, 6, 8-10, 14-15, 17, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (US Patent No. 6,783,016) .

Wang show and disclose a collapsible structure for holding water, comprising: an annular rim member defining a central opening, the rim member including a first frame member (12), a flexible and waterproof material (20) having a sleeve attached to the first frame member to form

a containing member that defines an annular side wall with a containing space for containing water therewithin, a second frame member (14) disposed spaced apart from and substantially parallel to the first frame member (12) and being retained within a sleeve formed by a lower end of the side wall of the containing member, the containing member having a base (18) with the second frame member positioned along the base, and the first and second frame members (12, 14) assume a folded and unfolded orientation and are folded into a plurality of concentric loops of frame member in the folded orientation (see Figs. 4 and 5).

6. Claims 1-2, 4, 6, 8-10, 12, 14-15, 17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaw et al. (US Patent No. 5,429,437) .

Shaw et al. show and disclose a collapsible structure for holding water, comprising: an annular rim member (15) defining a central opening, the rim member including a first frame member (15), a flexible and waterproof material (16) attached to the rim member to form a containing member that defines an annular side wall with a containing space for containing water therewithin, the containing member having a base (18), a second frame member (14) attached to the side wall of the containing member and spaced apart from the first frame member to retain the containing space, wherein the first and second frame members (15, 14) are retained within sleeves formed by the flexible and waterproof material respectively, the first and second frame members (15, 14) assume a folded and unfolded orientation and are folded into a plurality of concentric loops of frame member in the folded orientation (see Fig. 4), wherein the first and second frame members are disposed substantially parallel to each other, and the second frame

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member has a diameter substantially greater than the diameter of the first frame member such that the side wall of the containing member provides a taped configuration (see Figs. 2 and 3).

7. Claims 6, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Connolly (US patent No. 6,561,372).

Connolly shows and teaches a structure for holding water, comprising an annular rim member defining a central opening, the rim member including a first frame member (6), a flexible and waterproof material (9) attached to the first frame member by sleeves (10) to form a containing member that defines a side wall with a containing space therewithin, said containing member (9) having a side wall (8) and a base (7), a second frame member (5) attached to the side wall and spaced apart from the first frame member, and the first and second members being substantially parallel to each other.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 11, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang '016 or Shaw et al. '437 as applied to claims 1 or 6 or 8 above, and further in view of Gamble (US Patent No. 1,691,904).

The claims are considered to meet by Wang or Shaw et al. as explained and applied above rejections except that Wang or Shaw et al. does not define the structure having a third frame member attached to the side wall and spaced apart from the first and second frame members as claimed. Gamble teaches a structure having a containing member having an upper end attached to a first frame member (18) and a base attached to a second frame member and a side wall extending therebetween to form a containing space therewithin, and in addition, having at least one third frame members (18) being attached to the side wall and disposed between the first and second frame member for supporting the side wall, wherein each frame member assume a folded and an unfolded orientation and can be folded into a plurality of concentric loops of frame members in a unfolded orientation. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the structure of Wang or Shaw et al. to have at least one third frame member attached to the side wall of the containing member of the structure of Wang or Shaw et al. as taught by Gamble for providing stiffening support to the side wall of the containing member in a suspend position.

10. Claims 7, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang '016 or Shaw et al. '437 or Connolly '372 as applied to claims 1 or 6 or 8 above, and further in view of Peterson (US Patent No. 6,076,201).

The claims are considered to meet by Wang or Shaw et al. or Connolly as explained and applied above rejections except that Wang or Shaw et al. or Connolly does not define the containing member being made of what specific flexible and waterproof material such as PVC as claimed, however, Wang and Shaw et al. and Connolly teach a containing member being made

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of flexible and waterproof material for containing water wherewithin. Peterson teaches a pool container having a containing member, preferably being made of specific polymeric plastic material such as polyvinylchloride (PVC) for providing a durable synthetic containing member that can be easily folded and containing water therein. It would have been obvious to one skilled in the art at the time the invention was made to form the containing member of Wang or Shaw et al. or Connolly with specific polymeric plastic material such as PVC as claimed as an obvious matter of design choice of material to take advantage of the polymeric plastic's desirable properties such as having durable with sufficient impact strength characterizes, thermal expansion, moisture absorption and resistance. etc. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new grounds of rejection.

### ***Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Winnie Yip  
Primary Examiner  
Art Unit 3636

wsy  
May 25, 2006